

New Orleans Center for Creative Arts
Title IX Policy and Procedures

Title IX states “[n]o Person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.” 20 U.S.C. § 1681(a).

New Orleans Center for Creative Arts (NOCCA) does not discriminate on the basis of sex in the education programs and activities that it operates, and NOCCA is required by Title IX, as amended, not to discriminate in such a manner. Accordingly, NOCCA requires its staff, teachers, employees and students to abide by the requirements of Title IX of Education Amendments of 1972, as amended, and has updated these policies to implement the amended regulations.

Sexual harassment is a form of sex discrimination and is explicitly prohibited, whether such conduct occurs on or off campus, during or after school hours or directly related to school-sponsored activities, or at a time and/or place directly related to school functions or employee’s school related duties. It is the intent of NOCCA to maintain an environment free from sexual assault and sexual harassment of any kind; therefore, this policy commands that no student shall be subjected to sexual misconduct, sexual assault or sexual harassment by other students or by NOCCA staff or employees. This policy shall be enforced and the accompanying procedures shall be implemented regardless of whether a complaint has been filed with or an investigation has been instituted by any law-enforcement agency.

Sexual harassment occurs when: education benefits are conditioned upon participation and unwelcome sexual conduct (*i.e.*, *Quid Pro Quo*); unwelcome conduct occurs when a reasonable person would determine it is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school’s education program or activity; and/or sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).

Title IX requires NOCCA to take steps to prevent and remedy two forms of sex-based harassment: sexual harassment (including sexual violence) and gender-based harassment. "Sexual harassment" is unwelcome conduct of a sexual nature. It includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual violence is a form of sexual harassment. Sexual violence, as the Office of Civil Rights uses of the term, refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. A number of different acts fall into the category of a sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. Title IX also prohibits gender-based harassment, which is unwelcome conduct based on the student's sex, or harassing conduct based on the student’s failure to conform to sex stereotypes.

Sex-based harassment can be carried out by school employees, other students, and third parties. All students can experience sex-based harassment, including male and female students, LGBTQ students, students with disabilities, and students of different races, national origin, and ages. Title IX

protects all students from sex-based harassment, regardless of the sex of the parties, including when they are members of the same sex.

Sex-based harassment creates a hostile environment if the conduct is sufficiently serious that it denies or limits a student's ability to participate in or benefit from the school's program. When a school knows or reasonably should know of possible sex-based harassment, it must take immediate and appropriate steps to investigate or otherwise determine what occurred. If an investigation reveals that the harassment created a hostile environment, the school must take prompt and effective steps reasonably calculated to end the harassment, eliminate the hostile environment, prevent its recurrence, and, as appropriate, remedy its effects.

Questions regarding Title IX may be referred to the U. S. Department of Education, Office of Civil Rights (OCR) or NOCCA school's Title IX Coordinator Maisha Joshua at phone number: 504-940-2818; or email: mjoshua@nocca.com.

NOCCA's Title IX Personnel Team consists of the following individuals:

1. The Title IX Coordinator: Maisha Joshua, 504.940.2818; mjoshua@nocca.com.
2. The Title IX Investigator: Al Carter, 504.940.2887; acarter@nocca.com
3. The Title IX Decision-Maker: Kit Nelson, 504.940.2879; knelson@nocca.com
4. The Title IX Decision-Maker: Silas Cooper, 504.940.2836; scooper@nocca.com
5. The Title IX Appeal Person: Kyle Wedberg, 504.940.2787; kwedberg@nocca.com

Definitions under Title IX

"Actual knowledge" is present when the Title IX Coordinator, any official with authority to institute corrective measures, or ANY EMPLOYEE (excluding respondent) of NOCCA has notice or receives a report or information or learns of sexual harassment or allegations of sexual harassment. Any employee with actual knowledge of sexual harassment or allegations of sexual harassment is required to make a report to the Title IX Coordinator.

"Complainant" means the individual who is alleged to be the victim of conduct that could constitute sexual harassment. A person may be a complainant even when no report is filed and no grievance is pending. At the time of filing, the complainant must be participating in or attempting to participate in the educational program or activity of NOCCA.

"Decision-maker" means the persons tasked with the following: 1) the responsibility of making initial determinations or responsibility (also referred to as the "initial decision-maker" or 2) the responsibility to decide any appeal (also referred to as the "appeal decision-maker") in formal complaints of sexual harassment in the Title IX grievance process.

"Deliberate indifference" is when NOCCA's response is clearly unreasonable in light of known circumstances.

“Determination regarding responsibility” is the formal conclusion of the initial decision-maker on each allegation of sexual harassment as to whether the respondent did or did not engage in the alleged conduct constituting sexual harassment.

“Education program or activity” was previously defined as all the “operations of [NOCCA]....” In 34 C.F.R. § 106.44(a), the definition has been enlarged to include any location, event or circumstance over which NOCCA exercised substantial control over both the respondent and the context in which the harassment occurs.

“Formal complaint” is a document filed by a complainant, the complainant’s parent/guardian, or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that NOCCA investigate the allegations.

“Respondent” means the individual who has been reported to be the perpetrator of the conduct that could constitute sexual harassment. A person may be a respondent even when no report is filed and no grievance is pending.

“Sexual harassment” - Conduct “on the basis of sex” that meets one or more of the following:

1. Sexual assault or sexual harassment is unwelcome conduct of a sexual nature.
2. Sexual harassment may include, but is not limited to, unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature when at least one (1) of the following occurs:
 - Submission to such conduct is made, either implicitly or explicitly, a term or condition of the student’s grades, academic status, or progress or is used to deprive the student of access to the education opportunities and benefits provided by NOCCA.
 - Submission to or rejection of such conduct is used as the basis for academic or other school related decisions affecting the student.
 - Such conduct of a sexual nature is sufficiently severe, persistent, or pervasive and has the purpose or effect of unreasonably interfering with the student’s academic performance, or of creating an intimidating, hostile, or offensive educational environment for the student.
3. Extended definition of sexual harassment which may include but is not limited to:
 - Verbal harassment or abuse;
 - Uninvited letters, telephone calls, or materials of a sexual nature;
 - Uninvited or inappropriate leaning over cornering, patting or pinching;
 - Uninvited sexually suggestive looks or gestures;
 - Intentional brushing against of a student’s or a school employee’s body;
 - Uninvited pressure for dates;
 - Uninvited sexual teasing, jokes, remarks or question;
 - Any sexually motivated unwelcome touching;

- Any conduct resulting in an intimidating, hostile or offensive educational environment; or
- Attempted or actual rape or sexual assault or sexual battery, including "sexual assault as defined in 20 U.S.C. 1092(f)(6)(A)(v).
- "Domestic Violence" as defined in 34 U.S.C. 12291(a)(8);
- "Dating Violence" as defined in 34 U.S.C. 12291(a)(10); and
- "Stalking" as defined in 34 U.S.C. 12291(a)(30), including conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others or to suffer substantial emotional distress.

Reports of Sexual Harassment

Any person may report sex discrimination, including sex harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination), in person, by mail, by telephone, by email, or by any other means that results in NOCCA's Title IX Coordinator receiving the person's verbal or written report. **Any NOCCA employee** who knows or learns information concerning conduct related to sexual harassment or allegations of sexual harassment should immediately notify NOCCA's Title IX Coordinator. Failure to report will subject the employee to discipline, up to and including termination.

NOCCA shall follow all state laws regarding reporting allegations of criminal misconduct (i.e., sexual assault on a student) and all state laws and regulations regarding mandatory reporting.

Response to Notice of Sexual Harassment

NOCCA has specific obligations in responding to the notice of sexual harassment. Each of the procedural requirements set forth in the amended regulations are to ensure a fair process for both parties. NOCCA must respond promptly to actual knowledge of sexual harassment in an education program or activity and respond in a manner that is not deliberately indifferent. NOCCA must treat complainants and respondents equitably by offering supportive measures to a complainant and following a grievance process before imposing any disciplinary sanctions on a respondent.

- A. Complainant.** The Title IX Coordinator will contact the complainant promptly (even if a formal complaint has not been filed) to:
1. discuss the availability of supportive measures;
 2. consider the complainant's wishes regarding supportive measures;
 3. inform the complainant of the availability of supportive measures with or without the filing of a formal complaint; and
 4. explain the process for filing a formal complaint.

The process for filing a formal complaint is described below in the section of the policy entitled "Grievance Procedures"

- B. Respondent.** The Title IX Coordinator's response to the respondent will also protect the respondent's due process rights so as not to impact the respondent's access to education prior to the grievance process and a determination regarding responsibility. However, the regulations permit NOCCA to immediately remove a respondent from the education program or activity on an emergency basis if NOCCA conducts an individualized safety and risk analysis and determines that an emergency removal is necessary to protect any student or other individual from an immediate threat to physical health or safety. This provision shall not be construed to

modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act or regulations promulgated thereunder. An employee respondent may also be placed on administrative leave when a formal complaint has been filed. In either instance, NOCCA must provide respondent with notice and an opportunity to challenge the decision immediately after removal.

No Retaliation

Retaliation of any nature against any student or teacher, staff, or employee who makes a report or complaint or who participates in any investigation under this policy is a serious violation of NOCCA's sexual harassment policy. Such retaliation is considered an act of sexual discrimination itself; therefore, reports and complaints of such retaliation are handled in the same manner as those of sexual harassment. A reference to "sexual harassment" in this policy and the related procedures shall also include retaliation. As such, retaliation against an employee or student who brings sexual harassment charges or who assists in investigating such charges shall be prohibited. Any employee or student bringing a sexual harassment complaint or assisting in the investigation of such a complaint will not be adversely affected, discriminated against or punished because of the complaint.

Violations

1. Students and employees are encouraged and expected to immediately report incidents of alleged sexual discrimination or harassment and/or retaliation in accordance with these regulations and procedures.
2. All alleged violations of this policy shall be handled seriously and according to these regulations and procedures.
3. Discipline/Consequences.
 - 3.1. Any student who is determined to have engaged in a sexual assault, sexual discrimination or harassment or retaliation against another individual in violation of this policy may be subject to disciplinary action, up to and including expulsion.
 - 3.2. Any employee who is determined to have permitted, engaged in, or failed to report sexual assault, sexual harassment or retaliation in violation of this policy and the related procedures may be subject to disciplinary action, up to and including termination.

Enforcement

Administrators, staff members, and teachers have the responsibility of taking such reasonable steps necessary and practicable to maintain a work environment and educational environment free of sexual assault and sexual discrimination or harassment. Such steps shall include implementation of the following:

1. All teachers, other staff members, and all employees shall cooperate, as needed, in any formal and informal investigations instituted under this policy. The Title IX Investigator is responsible to investigate any report of sexual discrimination or harassment involving student on student

behavior in coordination with the Title IX Coordinator. Reports involving an employee shall also be immediately reported to the Title IX Coordinator.

2. Administrators and staff in charge of the discipline of students shall, in accordance with policy and law, take such disciplinary action against any student found to be in violation of the sexual harassment policy as may be appropriate under the circumstances.
3. Within the first week of school each school year, the Title IX Coordinator shall ensure that an in-service program addressing the sexual harassment policy and procedures is provided for teachers, staff and employees.
4. During orientation at the beginning of each school year or at the time of a new student's enrollment, the Administration shall ensure that instruction about sexual harassment, NOCCA's school policy, and its procedures are provided to students.
5. Teachers, counselors, and administrators shall instruct students on the sexual assault, dating violence, a sexual harassment report and complaint procedures within the educational setting on an as-needed basis.
6. The Title IX Coordinator shall ensure that the sexual assault, dating violence, or sexual harassment policy and procedures are provided to all students, parents, and employees by:
 - a. Including a restatement of the policy and procedures in the student handbook;
 - b. Posting an age-appropriate restatement of the policy against sexual assault and sexual harassment, the report and complaint procedures, and notice of the Title IX Coordinator at visible and accessible sites for students, for parents, and for employees;
 - c. Making a copy of the complete policy and procedures available on request for students, parents, and employees at the school office; and
 - d. Maintaining the policy and procedures on the NOCCA website.

****The Title IX Coordinator for NOCCA is:**

Ms. Miashia Joshua,

Title IX Coordinator

Phone: (504) 940-2818

Cell: (504) 913-3733

EMAIL: mjoshua@nocca.com

Appeal of Title IX Finding

Any appeal or grievance related to the Title IX Investigation shall be sent in writing to the NOCCA CEO, Kyle Wedberg, at the following address: 2800 Chartres Street, New Orleans, La. 70117 and email to: kwedberg@nocca.com

In reviewing the decision, the CEO of NOCCA may uphold, modify, or reverse the decision of the Title IX Coordinator. The CEO's review of the Title IX Investigation findings and determination is final.

New Orleans Center for the Creative Arts

Title IX Grievance Procedure

The following are all components of NOCCA's grievance process:

1. Treat complainants and respondents equitably by providing remedies to a complainant after a determination of responsibility for sexual harassment has been made against a respondent, and by following this grievance process before imposing any disciplinary sanctions or other actions that are not supportive measures against a respondent. Remedies must be designed to restore or preserve equal access to NOCCA's education program or activity. Remedies may include supportive measures but may also include disciplinary action against respondent.
2. Provide an objective evaluation of all available evidence without making credibility determinations based on a party's status as complainant, respondent, or witness.
3. The Title IX Coordinator, investigator, decision-maker, or any person designated to facilitate an informal process must not have a conflict of interest or bias for or against complainant or respondent. Training is provided for these individuals on definition of sexual harassment, scope of NOCCA's program or activity, how to conduct an investigation and grievance process, hearings, the use of any technology to be used at hearings, appeals and informal processes. Investigators are trained on how to prepare an investigation report. Decision-makers are trained on issues of evidence and questioning.
4. There is a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility has been made at the conclusion of the grievance process.
5. NOCCA will provide reasonably prompt time frames for completing the grievance process, including a process for temporary delays or limited extension of time frames for good cause such as law enforcement involvement, absence of a witness, party, etc. with written notice to both parties explaining the reasons for the delay.
6. Identify possible disciplinary sanctions and remedies that may be implemented. Remedies may include disciplinary action up to and including suspension or termination of employment (if an employee) and suspension or expulsion (if a student).

7. NOCCA has adopted the preponderance of the evidence standard to determine responsibility.
8. Provide procedures and permissible reasons for appeal by a respondent or a complainant.
9. Provide a description of the range of supportive measures available to complainants and respondents.
10. Disallow evidence or questions that constitute or seek legally privileged information, unless the privilege is waived.

Formal Complaint

These Grievance Procedures are implemented when a formal complaint is filed with the Title IX Coordinator. In accordance with the definition found elsewhere in this Policy, a formal complaint may only be filled out and signed by the complainant, the complainant's parent/guardian, or the Title IX Coordinator. The formal complaint must include, at a minimum, all of the specific allegations of sexual harassment or sexual misconduct known at the time, including dates, times, locations, and parties. The signing of a formal complaint includes a request that NOCCA investigate the allegations in accordance with these Grievance Procedures.

Written Notice

NOCCA provides a written notice to all known parties upon receipt of a formal complaint. The Notice shall be sent to the parties contemporaneously. The Notice includes all of the following:

1. Notice of the grievance process, including any informal resolution process;
2. Notice of the allegations potentially constituting sexual harassment as defined in Title IX with sufficient details (names, dates, conduct, location, etc.) to allow the respondent to prepare a response before any initial interview;
3. A statement that the respondent is presumed not responsible for the conduct and responsibility will be determined at conclusion of grievance process;
4. Notice of the parties' right to have an advisor (may be an attorney) and to inspect and review evidence, and that
5. The code of conduct prohibits knowingly making false statements or providing false information in the grievance process.

If a formal complaint is initiated (1) without knowledge of the respondent's identity or (2) by the Title IX coordinator without knowledge of the complainant's identity, and the identity of the complainant and/or respondent is later discovered through the Title IX investigation, NOCCA shall provide an additional, updated Notice to all parties.

Dismissal of Formal Complaints

1. A complaint must be dismissed if the allegations do not constitute sexual harassment as defined even if proved, did not occur in NOCCA's program or activity, or did not occur against a person in the United States.
2. A complaint may be dismissed if complainant notifies the Title IX Coordinator at any time that they wish to withdraw the complaint or an allegation, if the respondent's enrollment or employment ends, or if specific circumstances prevent NOCCA from gathering evidence (e.g. passage of several years between complaint and alleged conduct, non-cooperation of complainant, etc.).
3. Notice of dismissal must be provided to both parties, including the reasons for dismissal.

Consolidation

Where allegations arise out of the same facts or circumstances, formal complaints can be consolidated against more than one respondent, by more than one complainant against one or more respondents, or by one party against another party.

Investigation Procedure

NOCCA's Investigative process:

1. Ensures that the burden of proof and gathering evidence rests on NOCCA rather than the parties (note: certain treatment records cannot be obtained without voluntary, written consent; also parent consent may be sought under FERPA if applicable);
2. Provides an equal opportunity for the party to present witnesses and evidence;
3. Does not restrict either party's ability to discuss the allegations or gather and present evidence;
4. Provides the same opportunity to have others present during interviews or other proceedings, including an advisor (who may be an attorney) and ensures that any restrictions on advisor participation apply equally to both parties;
5. Provides written notice to a party who is invited or expected to attend and includes, the date, time, participants, purpose, and location of any investigative interview or other meeting with enough time to allow the party to prepare to participate;
6. Provides both parties and their advisors, if any, an equal opportunity to review all evidence that is directly related to the allegations in the formal complaint, including evidence on which NOCCA does not intend to rely and any exculpatory or inculpatory evidence from any source. This evidence must be provided prior to the completion of the final investigative report and in time to give the parties at least 10 days to submit a written response, which investigator must consider before completing the investigation report; and
7. Includes preparation of a written investigation report that fairly summarizes the relevant evidence; report will be provided to the parties and their advisors at least 10 days before a determination of responsibility for review and written response.

Hearings and Written Questions

No hearing is required in K-12 educational institutions. School officials may determine that hearings will be held in certain circumstances, and under such circumstances written notice to the parties will be provided. With or without a hearing, after NOCCA has sent the investigative report to the parties and before reaching a determination regarding responsibility, the decision-maker must provide each party the opportunity to submit written, relevant questions that the party wants asked of another party or witness, provide each party with the answers, and provide for limited follow-up questions. The recent amendments to Title IX provide restrictions, with limited exceptions, on certain types of questions related to the complainant. If the decision-maker determines that any submitted questions shall be omitted as irrelevant, the decision-maker will provide written notice and explanation as to why such question(s) were omitted.

Determination of Responsibility

The decision-maker cannot be the Investigator or the Title IX Coordinator. The decision-maker issues a written determination of responsibility that:

1. Identifies the allegations that potentially constitute sexual harassment as defined in the amendments;
2. Describes NOCCA's procedural steps taken from the receipt of the complaint to the determination;
3. Includes findings of fact supporting the determination;
4. Includes conclusions regarding application of the code of conduct to the facts;
5. Includes a statement of, and a rationale for, the result as to each allegation, including a determination of responsibility, any disciplinary sanctions imposed upon the respondent, and whether remedies to restore or preserve equal access to NOCCA's education program or activity will be provided to the complainant; and
6. Includes procedures for appeals.

Appeals

1. Both parties have the right to appeal a determination of responsibility and NOCCA's dismissal of a complaint or any allegations for the following reasons:
 - a. A procedural irregularity that affected the outcome;
 - b. New evidence that was not reasonably available at the time of the determination regarding responsibility and could affect the outcome; or
 - c. Conflict of interest on the part of the Title IX Coordinator, investigator, or decision-maker that affected the outcome
2. NOCCA will ensure that written notice is provided to both parties of the appeal and provide both parties an equal opportunity to submit a written statement in support of, or challenging, the determination.
3. A written decision of the appeal will be provided to both parties simultaneously.

4. The decision-maker for the appeal (the appeal decision-maker) cannot be the Title IX Coordinator, the investigator or the initial decision-maker.

Informal Resolution

At any point during the formal complaint process, NOCCA may offer to facilitate an informal process that does not require a full investigation as long as both parties receive written notice of their rights and the parties provide written, voluntary consent. NOCCA cannot require the waiver of the right to an investigation and adjudication of formal complaints as a condition of employment or continuing employment of an employee, or enrollment or continuing enrollment of a student. NOCCA cannot offer to facilitate an informal resolution process unless a formal complaint has been filed. NOCCA cannot offer informal resolution in the context of a complaint alleging that an employee harassed a student. At any point prior to agreeing to an informal final resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.